"... a covenant to pay interest may be so expressed as not to merge in a judgment for the principal; for instance, if it was a covenant to pay interest so long as any part of the principal should remain due either on the covenant or on a judgment."

and *London Borough of Ealing* v. *El Isaac*[5] where Templeman L.J. (as he then was) said (at p. 551):

"It appears ... that merger has a very restricted operation. It does not, as appears from the *Usborne* case which I have just cited, apply to a security. It does not apply to what is said to be an independent covenant and in most mortgages and deeds of borrowing these days care is taken to make the covenant an independent covenant. So that, in practice, the number of times on which interest ceases to run from a date of judgment is very small. But on principle and on the authorities, it seems to me, the merger doctrine only applies to contracts and covenants."

In any case, I am of the view that neither Order 59 rule 2(2) nor rule 31(4) has the effect of curtailing the plaintiffs' right in the present action to solicitor and client costs as agreed by the defendants. As I have stated, the plaintiffs are not invoking the discretionary power of the court to award them costs but are suing to recover costs under an agreement. Therefore Order 59 rules 2(2) and 31(4) are not relevant to the plaintiffs' claim.

Accordingly, I allow the appeal and order that the plaintiffs do have the costs of this action to be taxed on a solicitor and client basis.

*Order accordingly.*

Solicitors: *Ramdas & Wong; R.S. Wijaya & Co.*

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## THE "EISHIN MARU"

## BRIGHT NAVIGATION CO. LTD. v. "EISHIN MARU", OWNERS OF

**[O.C.J. (Chan Sek Keong J.C.) January 20, 1988]**

**[Singapore – Admiralty in Rem No. 487 of 1986]**

*Civil Procedure – Statement of claim – Part of – Striking out of – Application for – Whether there was compliance with Order 18 rule 15(2) of Rules of Supreme Court 1970 – Breach of Order 18 rule 15(2) an irregularity – Writ can be amended – Application held over – Admiralty action in rem – R.S.C. 1970, O. 18 r. 15(2).*

*Shipping – Admiralty action in rem – Claim for beneficial ownership – Statement of claim – Part of – Striking out of – Application for – Whether there was compliance with Order 18 rule 15 of Rules of Supreme Court 1970 – Writ can be amended – Application held over.*

The plaintiffs agreed to purchase a vessel from certain Japanese owners. They regarded the Japanese owners as the beneficial owners of the vessel. They filed an admiralty action *in rem* to, *inter alia,* enforce the agreement.

Thereafter, the plaintiffs filed their statement of claim claiming, *inter alia,* that they are the beneficial owners of the vessel. Meanwhile, a company called TJT claimed that they were the beneficial owners of the vessel. They made an application, as defendants, to strike out certain paragraphs and certain reliefs claimed in the statement of claim. They contended, *inter alia,* that the statement of claim did not comply with Order 18 rule 15(2) of the Rules of the Supreme Court 1970.

**Held**: (1) there was no doubt that the statement of claim does not comply with Order 18 rule 15(2). However, it does not necessarily follow from this that the offending claims must be struck out. A breach of Order 18 rule 15(2) is only an irregularity and if it can be remedied by an amendment to the writ there is no reason why the relevant paragraphs in the statement of claim should be struck out. To strike them out at this stage when the defect can be remedied will only lead to further delay in the resolution of this dispute. TJT could never be liable to the plaintiffs in respect of the said *in personam* actions whatever the position might be as regards the ownership of the vessel. These claims will fail against TJT irrespective of whether TJT have become the owners of the vessel. Therefore TJT had no interest whatever in these claims and no *locus standi* to object to the inclusion of these claims in the statement of claim;

(2) in the circumstances, this application should be held over to enable the plaintiffs to apply to amend the writ.

*Cases referred to:*

(1) *Sterman* v. *E.W. & W.J. Moore* [1970] 1 Q.B. 596.
(2) *The Lord Strathcona* [1925] P. 143.
(3) *Five Steel Barges* (1890) 15 P.D. 142.
(4) *The Elton* [1891] P. 265.
(5) *The August 8* [1983] 2 A.C. 450.

ADMIRALTY ACTION.

*Steven Chong* for the applicants/defendants.
*S. Gunaseelan* for the respondents/plaintiffs.

*Cur. Adv. Vult.*

**Chan Sek Keong J.C.**: This is an application by the defendants to strike out paragraphs 7, 8, 9 and 10 of, and certain reliefs in, the statement of claim on the grounds that (a) they contain claims in respect of causes of action not mentioned in the indorsement of the writ and (b) these claims being *in personam* actions may not be claimed in an admiralty action *in rem*.

The history of these proceedings is as follows. On October 9, 1986, the plaintiffs commenced this admiralty action against the owners of the vessel as the defendants. The writ was indorsed with an indorsement of claim as follows:

"The plaintiffs' claim is for a declaration that they are the sole beneficial owners of the ship or vessel 'Eishin Maru' of the Port of Naruto, Japan (also known as 'TJT 2' of the Port of Bangkok) pursuant to a bill of sale or agreement dated February 24, 1986 and duly executed at Bangkok between Eishin Kaiun Y.K. and Meisei Kaiun K.K. as owners/vendors and the plaintiffs as purchasers; specific performance and damages. Alternatively, repayment of the sum of 10,000,000 yen paid by the plaintiffs to the aforesaid owners/vendors of the vessel pursuant to the aforesaid bill of sale or agreement, and the further sum of baht 1,556,999.32 incurred by the plaintiffs in respect of the said vessel at the port of Bangkok, together with interest on the said two (2) sums."

It is clear from the writ that the plaintiffs regarded the Japanese vendors (hereinafter called "the vendors") as the beneficial owners of the vessel at the date of the writ. On October 10, 1986, the plaintiffs caused the said vessel to be arrested in Singapore.

On October 13, 1986, a company called T.J.T. Co. Ltd. (hereafter called "TJT) who claimed to be the beneficial owners of the vessel made an application as the defendants:

(1) to set aside the writ and the warrant of arrest issued in the action on the grounds that: (a) it disclosed no reasonable cause of action; (b) it was scandalous, frivolous and vexatious and (c) it was an abuse of process of court.

(2) damages for wrongful arrest of the vessel.

This application was heard on October 18, 1986 by the Deputy Registrar who made no order on the application except for costs. TJT then entered appearance as the defendants and beneficial owners of the vessel on October 20, 1986 and on the same day appealed against the decision of the Deputy Registrar. The affidavit filed by the plaintiffs and an intervener to the proceedings made it plain that they did not recognize TJT as the beneficial owners of the vessel.

The appeal was heard by me on November 11, 1986 and on November 18, 1986 I allowed the appeal in part by ordering that the alternative claim for the repayment of 10 million yen against the vendors and the claim for baht 1,556,999.32 for expenses incurred in respect of the vessel be struck out.

On November 24, 1986, the plaintiffs filed the statement of claim which reads as follows:

"(1) The plaintiffs are the beneficial owners of the abovenamed ship or vessel m.v. 'Eishin Maru' of the port of Naruto, Japan (also known as 'TJT 2') and entitled to possession of her as hereinafter appears.

(2) At all material times the said vessel was registered at the port of Naruto, Japan, as being owned by Eishin Kaiun Y.K. and Meisei Kaiun K.K., both of Japan (hereafter referred to as 'the Japanese owners').

(3) By an agreement in writing dated February 24, 1986 and executed in Bangkok between the Japanese owners, or on their behalf, and the plaintiffs, the Japanese owners agreed to sell and the plaintiffs agreed to purchase the said vessel for the sum of 42,500,000 yen and subject to the terms and conditions therein contained. The plaintiffs shall refer to the said agreement at the trial of this action for its true construction and effect.

(4) Pursuant to article 3 of the said agreement, on February 25, 1986, the plaintiffs paid to the Japanese owners the sum of 10,000,000 yen (equivalent to S$140,845.00) at Bangkok, the receipt of which was duly acknowledged by or on behalf of the Japanese owners.

(5) Pursuant to article 4 of the said agreement, in consideration of the aforesaid part payment of the said purchase price paid by the plaintiffs to the Japanese owners, the master of the said vessel on behalf of the Japanese owners duly delivered and gave possession of the said vessel and all her certificates and documents to the plaintiffs at the port of Bangkok on May 1, 1986, and also executed in favour of the plaintiffs a certificate of delivery in respect of the said vessel.

(6) The plaintiffs, upon accepting delivery and taking possession of the said vessel as aforesaid, put their own watchmen and crew on board the same and were, thus, in uninterrupted possession of the said vessel at the port of Bangkok from May 1, 1986.

(7) On or about August 21, 1986, however, one S & T Services Ltd., purporting to represent one T.J.T. Services Ltd. of Bangkok, forcefully took possession of the said vessel on its behalf at the port of Bangkok. In so doing, the said S & T Services Ltd. or, alternatively, the said T.J.T. Services Ltd., by its servants or agents wrongfully ejected the plaintiffs' said watchmen and crew forcefully from the said vessel and deprived the plaintiffs of the same.

(8) The plaintiffs have incurred expenses totalling baht 451,228.00 (equivalent to S$38,239.66) in respect of the said vessel at the port of Bangkok from April 11, 1986 to April 30, 1986 as the Japanese owners' agents and, since taking delivery of the vessel on May 1, 1986 as aforesaid, the further sum of baht 278,864.32 (equivalent to S$23,632.54). They have also earned

and are entitled to agency fees from April 11 to 30, 1986 totalling baht 36,554.00 (equivalent to S$3,097.80).

(9) The said TJT Services Ltd. has entered an appearance in this action as the purported owners of the said ship or vessel m.v. 'Eishin Maru' (also known as 'T.J.T. 2'), which appearance the plaintiffs dispute for the reason that the Japanese owners were at the date of commencement of this action and still are the only registered legal owners of the said vessel.

(10) The said T.J.T. Services Ltd., upon taking possession of the said vessel, as aforesaid in paragraph 7 hereof, wrongfully refused to hand her over to the plaintiffs and converted the same for its use.

And the plaintiffs claim:

(1) A declaration pronouncing the plaintiffs to be the beneficial owner of the said ship or vessel 'Eishin Maru' (also known as 'TJT 2').

(2) Possession of the said vessel or, alternatively, entitlement to an equitable sum out of the proceeds of her sale by the court in lieu thereof.

(3) Alternatively, damages for expenses, loss and damage.

(4) If necessary a reference to the Registrar to assess the said damages.

(5) Condemnation of the defendants in costs of this action and in the damages arising from the conversion and detention by them of the said vessel.

(6) Such further or other relief as the court deems just."

On November 27, 1986, TJT made this application to strike out paragraphs 7, 8, 9 and 10 of the statement of claim and so much of prayers 2, 3, 4 and 5 thereof as related to the said paragraphs.

On August 28, 1987, the court, on the application of TJT, ordered the vessel to be released from arrest against a banker's guarantee in the sum of $250,000 to cover the claim in this action as well as the claims in five other admiralty *in rem* actions which have been made and all other claimants against the vessel. The requisite banker's guarantee has been provided and the vessel duly released.

TJT's application to strike out paragraphs 7, 8, 9 and 10 is made on the following grounds: (a) these paragraphs contain causes of action, *i.e.* damages for conversion and expenses incurred in respect of the vessel before and after its sale and delivery to the plaintiffs, which are not mentioned in the writ and therefore the statement of claim does not comply with Order 18 rule 15(2) of the Rules of the Supreme Court and (b) these causes of action give rise to *in personam* claims which may not be included in an action *in rem*.

Order 18 rule 15(2) states as follows:

'A statement of claim must not contain any allegation or claim in respect of a cause of action unless that cause of action is mentioned in the writ or arises from facts which are the same as, or include or form part of, facts giving rise to a cause of action so mentioned; but, subject to that, a plaintiff may in his statement of claim alter, modify or extend any claim made by him in the indorsement of the writ without amending the indorsement."

Order 18 rule 15(2) may be compared with Order 6 rule 2(1) which provides that the writ must be indorsed:

"with a concise statement of the claim made *or* the relief and remedy required in the action begun thereby." (emphasis added)

In *Sterman* v. *E W & W J Moore*[1] Lord Denning was of the view that the word "or" in Order 6 rule 2(1) should be read as "and" and that, in any case, it was very desirable that the indorsement should state the nature of the claim and the relief or remedy required. Salmon L.J. was of the view that if the plaintiff confined the indorsement of the writ to a concise statement of the relief or remedy required (as the plaintiff had done in that case) he would find himself in a difficult position as rule 15 precluded him from including any cause of action in his statement of claim which was not mentioned in the writ.

In *Sterman's* case, the plaintiff indorsed his writ as follows:

"The plaintiff's claim is for £500 damages for loss of earnings from May 1965 and for special damages and costs."

The statement of claim that was delivered set out facts which alleged negligence and breach of statutory duty. The defendants applied to have the statement of claim struck out as being in breach of Order 18 rule 15(2). The Court of Appeal held that the statement of claim did not comply with Order 18 rule 15(2) but, in the circumstances of that case, gave leave to the plaintiff to amend his writ.

In this case, there is no doubt that the statement of claim does not comply with Order 18 rule 15(2). However, it does not necessarily follow from this that the offending claims must be struck out. A breach of Order 18 rule 15(2) is only an

irregularity and if it can be remedied by an amendment to the writ there is no reason why the relevant paragraphs in the statement of claim should be struck out. To strike them out at this stage when the defect can be remedied will only lead to further delay in the resolution of this dispute. Further, it is clear from the history of these proceedings that, save for the claim in conversion, the other claims for reimbursement of expenses incurred in respect of the vessel were made and intended to have been made against the vendors and not TJT. Although TJT have entered appearance as owners of the vessel, the plaintiffs and the interveners have never accepted TJT's claim to ownership. Consistent with their stand, the plaintiffs have filed a statement of claim to include causes of action (one of which, the claim for agency fees, may be an action *in rem* claim even if the vendors were the beneficial owners of the vessel at the date of the writ) which were, by their terms, directed against the vendors and not TJT. Another reason why I have come to the conclusion that the said claims were never intended to have been made against TJT is the consideration that TJT could never be liable to the plaintiffs in respect of the said *in personam* actions whatever the position might be as regards the ownership of the vessel. These claims will fail against TJT irrespective of whether TJT have become the owners of the vessel. For these reasons, TJT have no interest whatever in these claims and therefore no *locus standi* to object to the inclusion of these claims in the statement of claim: see *The Lord Strathcona.*[2]

TJT do have a sufficient interest to object to the inclusion of the claim in conversion as being in contravention of Order 18 rule 15(2) since it is made against and affects TJT. But, as I have indicated, it may be more convenient to hold over this application until the plaintiffs have been given an opportunity to amend their writ. As limitation has not set in, there should be no difficulty in obtaining leave to amend unless counsel for TJT is correct in his other submissions that a claim *in personam* may not be included in an admiralty action *in rem* or alternatively the claim in conversion is not within the admiralty jurisdiction of the court and for that reason may not be claimed in such an action. There are two distinct issues here. The first is whether an action *in rem* and an action *in personam* within the admiralty jurisdiction of the court may be joined in one action. It is clear that this may be done: see *Five Steel Barges.*[3] So, if the claim in conversion against TJT is within the admiralty jurisdiction of the court, there should be no reason why it may not be joined in the present action *in rem* since TJT have entered appearance to the writ: see *The Elton*[4] and *The August 8.*[5] The second issue is whether a cause of action which is within the ordinary civil jurisdiction of the court but not within its admiralty jurisdiction may be joined with an admiralty action *in rem.* This issue will become relevant if the claim in conversion is within the ordinary civil jurisdiction of the court but not its admiralty jurisdiction. No doubt these points will be fully addressed when the plaintiffs make their application to amend and therefore it is neither proper nor desirable that I should say anything more on them.

In the circumstances, I shall hold over this application to enable the plaintiffs to apply to amend their writ. The parties will have liberty to apply. Costs of the application will be reserved.

*Order accordingly.*

Solicitors: *Drew & Napier; S. Gunaseelan.*

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## HONGKONG BANK TRUSTEE (SINGAPORE) LTD. v. FARRER TAN & 5 ORS.

**[O.C.J. (Chan Sek Keong J.C.) January 19, 1988]**

**[Singapore – Originating Summons No. 193 of 1985]**

*Succession – Will – Trusts created by will – Purpose trusts – Purposes became impossible to perform – Status of property bequeathed.*

*Trusts and Trustees – Purpose trusts – Created by will – Purposes became impossible to perform – Status of property held on trusts.*

*Trusts and Trustees – Purpose trusts – Purposes could not be performed – Whether trusts against rule against perpetuities – Whether trusts contrary to Accumulations Act 1800 – Stirpital division of the capital of the trust fund – Status of trust property.*

By clause 11 of her will, the testatrix provided that her property and a sum of $10,000 be held under certain trusts. By clause 21 of her will, the testatrix declared that if any legacies or bequests shall fail for any reason whatsoever then the property thereby devised or bequeathed shall fall into and form part of her residuary estate.

The testatrix died on September 18, 1931 and left surviving her two natural sons, *viz.* Edward Tan Tat Min and Farrer Tan Kong Min. Probate of her will was granted to the executors on November 6, 1931. On March 15, 1974, the plaintiffs were appointed the sole trustee in substitution for and in place of the former trustees.